

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MOOSE HILLS, LLC,

Plaintiff,

v.

ENEL KANSAS, LCC and ENEL  
SURPRISE VALLEY, LLC,

Defendants.

No. 2:22-cv-01488 MCE AC

ORDER

This matter is before the court on plaintiff's motion to compel. ECF No. 15. Plaintiff improperly included a substantive memorandum in the noticed motion, and defendant filed an ex parte application to file a separate response (ECF No. 17), but the parties ultimately complied with the Local Rules and filed a joint statement at ECF No. 19. Only the joint statement and accompanying exhibits have been considered. The ex parte application (ECF No. 17) is therefore DENIED as MOOT.

The motion to compel was submitted on the papers. ECF No. 16. Based on a review of all documents and argument presented, the court GRANTS plaintiff's motion and ORDERS defendant to turn over all non-privileged documents responsive to plaintiff's Requests for Production 4, 5, and 7 to plaintiffs within ten (10) days of this order. Because plaintiffs brought a meritorious motion to compel, the court GRANTS their request for attorneys' fees, though in the

1 reduced amount of \$7,000, to be paid within 10 days of this order. The court also orders the  
2 parties to submit a stipulated protective order for review by the court within 14 days of this order.

3 **I. Relevant Background**

4 Plaintiff filed its complaint for breach of contract, breach of the covenant of good faith  
5 and fair dealing, promissory estoppel, fraud (false promise), and tortious interference with a  
6 prospective economic advantage against defendants in state court on April 19, 2022. ECF No. 1-  
7 1. The action was subsequently removed to federal court based on diversity jurisdiction. ECF  
8 No. 1. The complaint alleges as follows.

9 Defendant Enel Kansas (“Enel”) reached an enforceable agreement with plaintiff (“Moose  
10 Hills”) whereby Moose Hills would purchase Enel’s interest in a sublease of the Surprise Valley  
11 property, in addition to rights to a well thereon, for \$100,000.00. ECF No. 1-1 at 4. Moose Hills  
12 is developing a geothermal project in Modoc County, California, and desired the rights to the  
13 wells on the Surprise Valley Property, which are leased by Enel. At the onset of interactions  
14 between Moose Hills and Enel, it seemed clear to Moose Hills that Enel was going to allow its  
15 lease on Surprise Valley to expire. Id. However, after substantial investigation and investment  
16 into the geothermal project by Moose Hills, Enel agreed to renew its lease in anticipation of an  
17 agreement with Moose Hills. On June 7, 2021, Enel solicited a Letter of Intent from Moose Hills  
18 to establish an outline of the terms between the parties. Id. at 5. On June 15, Enel indicated it  
19 would review the terms with its board, and on June 17 Enel confirmed in an email that it had  
20 approval to proceed with the contemplated Agreement based on the terms outlined in the Letter of  
21 Intent. Id. Between June 9, 2021 and April 9, 2022 the parties communicated regarding a non-  
22 disclosure agreement, an exclusivity agreement, geothermal well rights, and an intended sublease  
23 of the Surprise Valley property. Id. On June 28, 2021, the parties entered into a Non-Disclosure  
24 Agreement which provided that information obtained in the course of the parties’ discussions  
25 was the sole property of the disclosing party. Id.

26 On June 29, 2021, Enel confirmed it would extend its master leases to preserve its ability  
27 to sublease Surprise Valley to Moose Hills, promising and assuring Moose Hills that it did not  
28 need to worry about the expiration of the lease. Id. at 6. After 10 months of correspondence,

1 Moose Hills agreed to the form of the Agreement to purchase the interest in Surprise Valley. Id.  
2 On October 27, 2021, Moose Hills expressed frustration at the delay and requested confirmation  
3 that a deal has been reached. Id. On October 28, 2021, Enel responded and confirmed their  
4 intent to sell the interest to Moose Hills, stating that it would send a draft agreement shortly. Id.  
5 In reliance on this, Moose Hills invested money into a drilling contract, attorneys fees, a line of  
6 credit, government grant applications, and due diligence. Id.

7 On or about April 8, 2022, Moose Hills became informed that Enel was considering third  
8 party offers for its interests in Surprise Valley, LLC, the entity holding Enel's leases for the  
9 Surprise Valley Property. Id. On April 10, 2022 Moose Hills sought confirmation from Enel on  
10 or before April 18, 2022 that it was not attempting to breach the parties' agreement by shopping  
11 the asset to third parties. Id. Enel ignored the request for confirmation, and Moose Hills alleges  
12 that Enel has breached and continues to breach the agreement. Id. at 7. Further, Moose Hills  
13 contends that Enel has revealed confidential projects of the Surprise Valley Property to third  
14 parties in breach of the non-disclosure agreement. Id.

## 15 II. Motion

16 Plaintiff filed the pending motion to compel on April 10, 2023. ECF No. 15. The parties'  
17 joint statement was filed on April 19, 2023. ECF No. 19.<sup>1</sup> Plaintiff's motion raises two  
18 questions: (1) is Enel Kansas obligated to disclose documents related to communications between  
19 itself and third parties concerning the Surprise Valley property from the period of January 1, 2019  
20 through January 24, 2023, and (2) is Enel Kansas obligated to disclose documents related to  
21 communications between itself and its parent company/related companies concerning the Surprise  
22 Valley property from the period of January 1, 2019 through January 24, 2023. Defendants assert  
23 that the issue is even more narrow because they have agreed to comply with plaintiff's discovery  
24 requests with one exception: they have not agreed to provide documents concerning competing  
25 third-party offers that did not result in a sale. ECF No. 19 at 20.

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26  
27 <sup>1</sup> In the joint statement, plaintiff improperly embeds a request for an extension of discovery  
28 deadlines. The court will not consider this issue here; it must be brought by separate motion  
directed to the judge who set the schedule plaintiff wishes to amend.

In the motion, plaintiff specifically references three Requests for Production, set forth below:

Request for Production No. 4

Produce any and all DOCUMENTS in YOUR possession, custody and control relating to communications Defendants Enel Kansas, LLC's employees, agents, officers, and owners have had with any person or entities relating to the "Surprise Valley Property," (commonly referred to as Enel's Surprise Valley Geothermal Project SVGP) from January 1, 2019 through to January 24, 2023.

RESPONSE TO REQUEST NO. 4:

Defendants object to this Request as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiff's definition of the term "YOUR" purports to include entities other than the named defendants in this action, or calls for production of documents and information not in Defendants' possession, custody, or control. Defendants further object to this Request as overbroad and unduly burdensome to the extent that it seeks "any and all DOCUMENTS . . . relating to" the recited subject matter, which would include information beyond the scope of the claims asserted, beyond issues relevant to the current Defendants further object to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case to the extent that it seeks responsive documents beyond the time period relevant to this litigation. Defendants further object to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine and/or other applicable privileges. Defendants further object to this Request insofar and to the extent that it seeks documents and information that constitute or evidence confidential and/or proprietary information, or information belonging to third parties with whom Defendants have entered into non-disclosure or confidentiality agreements that prohibit the disclosure of such information by Defendants. Defendants are withholding documents on the basis of these objections and are willing to meet and confer with Plaintiff regarding the scope and meaning of this Request and Defendants' objections and responses thereto.

Request for Production No. 5

Produce any and all DOCUMENTS in YOUR possession, custody and control relating to communications Defendants Enel Kansas, LLC's employees, agents, officers, and owners have had with any person or entities relating to the sale, transfer, assignment, lease, or sublease of any of the leases which Defendant Enel Kansas, LLC, or Defendant Enel Surprise Valley, LLC holds for the "Surprise Valley Property," (commonly referred to as Enel's Surprise Valley Geothermal Project SVGP) from January 1, 2019 through to January 24, 2023.

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RESPONSE TO REQUEST NO. 5:

Defendants object to this Request as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiff's definition of the term "YOUR" purports to include entities other than the named defendants in this action, or calls for production of documents and information not in Defendants' possession, custody, or control. Defendants further object to this Request as overbroad and unduly burdensome to the extent that it seeks "any and all DOCUMENTS . . . relating to" the recited subject matter, which would include information beyond the scope of the claims asserted, beyond issues relevant to the current litigation, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case. Defendants further object to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case to the extent that it seeks responsive documents beyond the time period relevant to this litigation. Defendants further object to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine and/or other applicable privileges. Defendants further object to this Request insofar and to the extent that it seeks documents and information that constitute or evidence confidential and/or proprietary information, or information belonging to third parties with whom Defendants have entered into non-disclosure or confidentiality agreements that prohibit the disclosure of such information by Defendants. Defendants are withholding documents on the basis of these objections and are willing to meet and confer with Plaintiff regarding the scope and meaning of this Request and Defendants' objections and responses thereto.

Request for Production No. 7

Produce any and all DOCUMENTS in YOUR possession, custody and control relating to communications Defendants Enel Kansas, LLC's employees, agents, officers, and owners have had with the employees, agents, officers, and owners of the entities known as Enel, Enel S.p.A., Enel Group, and any of its subsidiary, sister, parent, or relate corporations or entities, concerning the "Surprise Valley Property," (commonly referred to as Enel's Surprise Valley Geothermal Project SVGP) from January 1, 2019 through to January 24, 2023.

RESPONSE TO REQUEST NO. 7:

Defendants object to this Request as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiff's definition of the term "YOUR" purports to include entities other than the named defendants in this action, or calls for production of documents and information not in Defendants' possession, custody, or control. Defendants further object to this Request as overbroad and unduly burdensome to the extent that it seeks "any and all DOCUMENTS . . . relating to" the recited subject matter, which would include information beyond the scope of the claims asserted, beyond issues relevant to the current litigation, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the

needs of the case. Defendants further object to this Request as overbroad, unduly burdensome, and not proportional to the needs of the case to the extent that it seeks responsive documents beyond the time period relevant to this litigation. Defendants further object to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine and/or other applicable privileges. Defendants are withholding documents on the basis of these objections and are willing to meet and confer with Plaintiff regarding the scope and meaning of this Request and Defendants' objections and responses thereto.

ECF No. 19 at 13-14.

### III. Analysis/Summary of the Evidence

#### A. Legal Standard on Motion to Compel

The scope of discovery in federal cases is governed by Federal Rule of Civil Procedure 26(b)(1). The Rule states:

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Fed. R. Civ. P. 26(b)(1). Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action. Fed. R. Evid. 401. Relevancy to the subject matter of the litigation "has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978). Relevance, however, does not establish discoverability; in 2015, a proportionality requirement was added to Rule 26. Under the amended Rule 26, relevance alone will not justify discovery; discovery must also be proportional to the needs of the case.

A party seeking to compel discovery has the initial burden to establish that its request is proper under Rule 26(b)(1). If the request is proper, the party resisting discovery has the burden

1 of showing why discovery was denied; they must clarify and support their objections.  
2 Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir. 1975). General or boilerplate  
3 objections, without explanation, are not prohibited but are insufficient as a sole basis for an  
4 objection or privilege claim. Burlington Northern & Santa Fe Ry. v. United States Dist. Court,  
5 408 F.3d 1142, 1149 (9th Cir. 2005).

6 B. The Requests for Production are Relevant and, as Modified, Not Overbroad

7 The court takes defendants at their word that the only remaining issue is whether  
8 defendants must provide documents concerning competing third-party offers that did not result in  
9 a sale. ECF No. 19 at 20. Defendants argue that such information is not relevant to plaintiff's  
10 damages claim, that plaintiff has failed to describe with particularity what confidential or  
11 proprietary information Enel purportedly disclosed to third parties, and that unsolicited third-  
12 party offers are not relevant and disproportionate to plaintiff's needs in establishing its claims.

13 The court generally disagrees with defendants' argument. First, communications and  
14 negotiations with third parties go to the heart of plaintiff's claims as described above, not simply  
15 to damages and/or the value of the property. Second, to the extent defendants argue the merits of  
16 plaintiff's case by stating that plaintiff has not met its pleading obligations with respect to what  
17 proprietary information was allegedly shared, the sufficiency of the pleadings is not before the  
18 undersigned on this discovery motion. Third, the requests are sufficiently narrowly tailored and  
19 not overbroad except as to time: they each ask for documents beginning January 1, 2019, when  
20 the complaint itself alleges that communications between the parties began in June of 2021. ECF  
21 No. 1-1 at 5. While plaintiffs may be interested in what types of offers defendants had before the  
22 parties became engaged with one another, such information is beyond the scope of plaintiff's  
23 complaint. Thus, the motion to compel will be granted, except that defendants are not obligated  
24 to produce documents dated prior to June of 2021.

25 Finally, to the extent there is any concern regarding the private information of third  
26 parties, this concern is easily addressed with a stipulated protective order. The joint statement  
27 indicates that the parties are in negotiations regarding such a statement. ECF No. 19 at 22. To  
28



1 circumvent dilatory conduct on the part of any party, the court will order that a stipulated  
2 protective order be filed with the court for review and approval within 14 days of this order.

3 C. Attorney's Fees and Costs

4 Because plaintiff's motion to compel is meritorious, an award of fees and costs is  
5 appropriate pursuant to Federal Rule of Civil Procedure 37(a)(5)(A) and E.D. Cal. R. ("Local  
6 Rule") 230. The appropriate method for computing fees in this case is the lodestar approach, in  
7 which the court multiplies the number of hours reasonably expended on the motion by a  
8 reasonable hourly rate. Cunningham v. Cty. of Los Angeles, 879 F.2d 481, 484 (9th Cir. 1988).  
9 "The measure to be used 'is not actual expenses and fees but those the court determines to be  
10 reasonable.'" Matter of Yagman, 796 F.2d 1165, 1184–85 (9th Cir.1986).

11 Here, plaintiff filed a detailed billing statement totaling 37.5 hours, but 20 of those hours  
12 were anticipated and never actually materialized (16 hours for travel to and from the hearing, 4  
13 hour for drafting a reply brief). ECF No. 19-2 at 6. Plaintiff requests a rate of \$400 per hour,  
14 which defendants do not oppose. Looking at awards in similar cases, the court finds that the  
15 hourly rate charged by plaintiff's attorney is reflective of the prevailing market rate within the  
16 Eastern District of California, Sacramento Division. The court will therefore award plaintiff  
17 compensation for 17.5 hours of attorney work at the rate of \$400 per hour, for a total award of  
18 \$7,000.

19 **IV. Conclusion**

20 For the reasons explained above, it is hereby ordered as follows:

- 21 a. Plaintiff's motion to compel the production of documents (ECF No. 15) is  
22 GRANTED and responsive documents must be produced within 10 days of this  
23 order;  
24 b. Defendants' ex parte motion (ECF No. 17) is DENIED as MOOT;  
25 c. The parties are ORDERED to file a stipulated protective report for the court's  
26 approval within 14 days of this order; and

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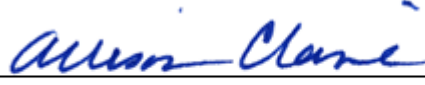
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d. Defendants are ORDERED to pay plaintiff \$7,000 in attorney's fees within 10 days of this order.

IT IS SO ORDERED.

DATED: May 12, 2023

  
ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE